

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LOYDALE KIRVEN,

Plaintiff,

vs.

No. CV 16-01361 KG/LF

MATT MAPLES, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 41(b) on the Complaint for Violation of Civil Rights filed by Plaintiff Loydale Kirven on December 12, 2016 (Doc. 1). On May 17, 2017, the Court entered an Order to Show Cause, within 21 days, why the Complaint should not be dismissed for failure to comply with the Court's Orders and failure to prosecute. (Doc. 4). Plaintiff Kirven has not shown cause or otherwise responded to the Court's Order to Show Cause. The Court will dismiss Kirven's Complaint without prejudice for failure to comply with the Court's Orders and for failure to prosecute.

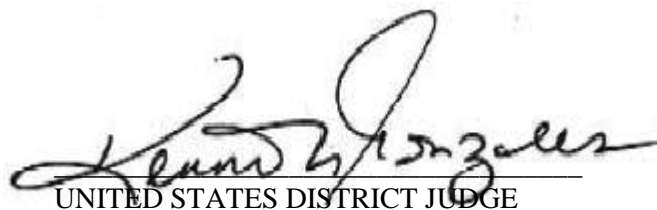
Plaintiff Loydale Kirven is incarcerated and proceeding pro se. (Doc. 1). Kirven filed this pro se prisoner civil rights case without paying the \$400 filing fee or submitting an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. Kirven has previously had three cases dismissed for failure to state a claim or as frivolous and, under 28 U.S.C. § 1915(g), can no longer proceed *in forma pauperis* unless he is in imminent danger of serious physical injury. *See Kirven v. State of New Mexico*, 14-CV-0209-LH-RHS, Doc. 3 (D.N.M. March 7, 2014).

On December 15, 2016, the Court entered an Order to Cure Deficiency, ordering Kirven to either pay the filing fee or submit an application to proceed *in forma pauperis* within thirty (30) days of entry of the Order. (Doc. 2). Kirven did not file an application to proceed under § 1915

or any other document alleging that he is under imminent danger of serious physical injury, nor did he pay the \$400 filing fee. The Court entered an Order to Show Cause on May 17, 2017, directing Kirven to show cause why the case should not be dismissed for failure to comply with the Court's December 15, 2006 Order and for failure to prosecute. (Doc. 4). Kirven has not responded to the Court's May 17, 2017 Order to Show Cause.¹

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Kirven has failed to prosecute this action by failing to pay the requisite filing fee or filing a § 1915 application to proceed *in forma pauperis* in compliance with § 1915(g). Kirven has also failed to comply with the Court's December 15, 2016 and May 17, 2017 Orders. This action will be dismissed for failure to comply with the Court's Orders and failure to prosecute. Fed. R. Civ. P. 41(b); *Olsen v. Mapes*, 333 F.3d at 1204, n. 3; *Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980).

IT IS ORDERED that the Complaint for Violation of Civil Rights filed by Plaintiff Loydale Kirven on December 12, 2016 (Doc. 1) is **DISMISSED** without prejudice for failure to comply with the Court's Orders and for failure to prosecute.



UNITED STATES DISTRICT JUDGE

¹ The Court's docket indicates that the Order to Show Cause was mailed to Kirven at his address of record, but was returned as undelivered. (Doc. 5). The Court's research shows that Kirven has either been released or transferred without notifying the Court of a change of address, providing an additional basis for dismissal of the case. *Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003).